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Legal Dept.

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Office of the R.L.A.

The proviso to Regulation 4 of the Bombay Public Service Commission (Condition of Service) Regulations reads as follows :

> "Provided that if a Chairman or Member at the time of his appointment, as such, is a retired Government servant, the Governor shall determine whether his pension shall be held in abeyance, and, if so, whether wholly or in part, or in the alternative shall determine whether the pay fixed by this regulation shall be reduced by an amount not exceeding the amount of such pension including such portion of it as may have been commuted if the pension is allowed to be drawn in full".

Controversy centres round the correct interpretation of the word "pension" used in this Regulation. No definition of that word is given in the Regulations themselves. Having regard, however, to the general character of this Regulation, and in particular to the reference to commutation, it would be reasonable to construe the word "pension" in accordance with the Rules which governing the determination, the payment and the condition of pensions. These are contained in the Civil Services Regulations and the Bombay Civil Services Rules, in both of which "pension" is defined in terms to include gratuity. That being so, there would be no scope for construing the term "pension" in this Regulation as meaning merely a periodical allowance exclusive of the gratuit which is included in the term "pension." The intention underlying the Regulation is that both pay and pension shall not be drawn together. This can be achieved either by holding the pension in obeyance or, where it is allowed to be drawn, by reducing the salary by that amount. It will be observed that where the pension is allowed to be drawn after commutation, the pay can be reduced by that portion as may have been commutted. On principle, there is no difference between a reduction of this kind and a reduction on account of gratuity. The Government of India's letter makes it abundantly clear that the gratuity which is given in the new

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Pension Rules as of the nature of pension, and that the pension equivalent of such gratuity should be taken into account for the purpose of determining the pay during reemployment. Having regard, therefore, to the underlying intention of the Regulation and the connotation of the term "pension" in the light of the Civil Services Regulations and the Bombay Civil Services Rules and the basis of the new pension scheme, it would follow that it is competent to Government to reduce ~~x~~ the pay of Shri Patil also by the pension equivalent of the gratuity.

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Remembrancer of Legal Affairs.

U.O. to P.& S.D., No. 17754/A; dated the 27th October, 1952.

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